

## SEISMIC MITIGATION PROGRAM PROPOSED REGULATORY AMENDMENTS

### Amend Regulation Section 1859.2

#### Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

...

"Form SAB 50-04" means the *Application For Funding*, Form SAB 50-04 (Revised ~~06/17~~ 01/18), which is incorporated by reference.\*

...

"Seismic Rehabilitation Grant" means a grant allowable under Education Code Section 17075.10(a) and (b)(2) and Section 1859.82(a)(1)(A)~~2(1)b~~, excluding additional grants.

"SFP New Construction Account" means the fund for new construction projects authorized by Education Code Sections 100420(a)(1), 100620(a)(1), and 100820(a)(1), 101012(a)(1), and 101122(a)(1).

...

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026 and 101012(a)(8), Education Code; Section 53311, Government Code; and Sections 1771.3 in effect on January 1, 2012 through June 19, 2014 and 1771.5, Labor Code.

### Amend Regulation Section 1859.82

#### Section 1859.82. Facility Hardship.

A district is eligible for facility hardship funding to repair, replace, or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

- (a) Repair of facilities, new classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space), or replacement facilities if either (1) or (2) are met:
  - (1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk. The total available funding-Funding for seismic mitigation related and ancillary costs for the Most Vulnerable Category 2 Buildings is \$199.5 million shall only be provided from the SFP New Construction Account.

...

~~(D) Notwithstanding Sections 1859.93 and 1859.93.1, all applications for the seismic mitigation of the Most Vulnerable Category 2 Buildings shall be funded in the order of receipt of an Approved Application for funding.~~

~~(E) If an Application for the seismic mitigation of the Most Vulnerable Category 2 Buildings cannot be fully apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans) because insufficient funding is available, the applicant may accept the remaining funding amount or refuse funding entirely. If partial funding is accepted, the applicant will remain eligible for the additional amount of seismic funds, up to the initial funding request, if funds become available within the Seismic Mitigation Program authority amount of \$199.5 million. If funding is refused, the Board shall consider funding the next project eligible for funding pursuant to this Section.~~

For any Application for the seismic mitigation of the Most Vulnerable Category 2 Buildings not apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans) pursuant to this Section, the application shall be returned to the applicant.

...

Note: Authority cited: Sections 17070.35, 17075.10 and 17075.15, Education Code.

Reference: Sections 17074.56, 17075.10, 17075.15, 17250.30 and 101012(a)(1), Education Code; and Section 1771.3 in effect on January 1, 2012 through June 19, 2014, Labor Code.

#### Amend Regulation Section 1859.93.1

##### Section 1859.93.1. New Construction Project Funding Order.

Applications, except those identified in (c) through (e) below, shall be funded as follows:

- (a) First, to applications for Facility Hardship pursuant to Section 1859.82, ~~except those for the seismic mitigation of the Most Vulnerable Category 2 Buildings~~, in order of receipt of an Approved Application for funding; then,
- (b) If there are no applications pursuant to subsection (a), to applications for New Construction Grant(s) in order of receipt of an Approved Application for Funding.
- (c) Approved Applications for New Construction Grant(s) funded with the proceeds of state bonds approved by the voters prior to January 1, 2002.
- (d) Approved Applications for New Construction Grant(s) authorized by Education Code Sections 17078.10 through 17078.30.
- (e) Approved Applications that utilize pupil eligibility derived from the Alternative Enrollment Projection method. These applications shall be funded in order of receipt once the OPSC and the DRU have approved the Alternative Enrollment Projection method or the Alternative Enrollment Projection annual update.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.25, 17070.35, and 17075.15, Education Code.

#### NEW CONSTRUCTION APPLICATION PROCESSING PROPOSED REGULATORY AMENDMENTS

#### Amend Regulation Section 1859.51

##### Section 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the Form SAB 50-03; will be adjusted as follows:

...

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts using a fifth-year projection or a tenth-year projection, except decreases as provided in (j) below. For all funding requests received by OPSC on or after June 6, 2017, OPSC will notify the School District in writing that OPSC is scheduled to begin processing the School District's Form SAB 50-04 and that the School District shall submit the Form SAB 50-01 for the current enrollment year. OPSC may return the Form SAB 50-04 to the School District for failure to submit the Form SAB 50-01 within 90 calendar days of OPSC's notification. Forms SAB 50-01 filed on or after November 1 must include the current enrollment year.:

- ~~(1) Utilizing a fifth-year projection.~~
- ~~(2) Utilizing a tenth-year projection.~~

...

(j) For Small School Districts:

- (1) Decreased: ~~(1) By~~ by any reduction in projected enrollment that follows a three-year period after the district's eligibility was approved by the Board, and either (2) or (3), as applicable:-

(2) Increased/decreased by changes in projected enrollment in the 2016/2017 enrollment year using a fifth-year projection or a tenth-year projection if the Form SAB 50-01 is received at OPSC by October 31, 2017.

(3) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years following 2016/17 using a fifth-year projection or a tenth-year projection.

If the Small School District does not submit an adjustment under (2) or (3) prior to OPSC notification of its schedule to begin processing the School District's request for new construction funding that was received by OPSC on or after November 1, 2012, then the requirements of (e) shall apply.

. . .

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20, 17077.40, 17078.72, 17079.20, 42268, and 42270, Education Code.

## Amend Regulation Section 1859.70

### Section 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file Form SAB 50-04, concurrently or after completing the applicable requirements in Sections 1859.20 and 1859.40. The Board shall only provide New Construction funding if the Approved Application was received by the OPSC prior to the date of Occupancy for any classrooms included in the construction contract. After the date of Occupancy of any classroom in the construction contract, a School dDistrict will be ineligible to seek New Construction funding and the classrooms will be reduced from the baseline eligibility pursuant to Section 1859.51(i) if not previously reduced.

A district affected by a reorganization election on or after November 4, 1998 may ~~not~~ file an application for New Construction funding after the notification of the reorganization election. ~~until~~ The School dDistrict must submit a new calculation of the district's baseline eligibility has been as determined on the Form SAB 50-03 upon written notification, or the district certifies certify that the reorganization election will not result in a loss of eligibility for the project for which the School dDistrict is requesting new construction grants. For all requests for funding received by the OPSC on or after June 6, 2017, the OPSC will notify the School District in writing that OPSC is scheduled to begin processing the School District's Form SAB 50-04. The School District must submit a completed Form SAB 50-03 within 90 calendar days of OPSC's notification. OPSC may return the Form SAB 50-04 to the School District for failure to submit the Form SAB 50-03 within 90 calendar days of OPSC's notification.

A School dDistrict that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17071.10, 17071.75, 17072.10 and 17074.10, Education Code.

\*The amendments to the Form SAB 50-04 relate to the New Construction Application Processing amendments and not the Seismic Mitigation Program amendments, and it is also defined in Regulation Section 1859.2.